

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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PLR-121487-07

Date:

August 27, 2008

Legend

Trust =

Fund A =

/PLR-121487-07

Fund B =

/PLR-121488-07

Fund C =

/PLR-121489-07

Fund D =

/PLR-121490-07

Fund E =

/PLR-121491-07

Fund F =

/PLR-121493-07

Fund G =

/PLR-121494-07

Fund H =

/PLR-121495-07

Fund I =

/PLR-121496-07

Fund J =

/PLR-121497-07

Fund K =

/PLR-121498-07

Fund L =

/PLR-121499-07

Fund M =

/PLR-121500-07

Fund N =

/PLR-121503-07

State X =

Company =

Administrator =

Auditors =

Calendar Year =

Taxable Year 1 =

Taxable Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This responds to a letter and subsequent correspondence submitted on behalf of Fund A, Fund B, Fund C, Fund D, Fund E, Fund F, Fund G, Fund H, Fund I, Fund J, Fund K, Fund L, Fund M, and Fund N, (collectively, the “Funds”). Each Fund requests that its election under section 855(a) of the Internal Revenue Code (Code) to treat certain dividends distributed after the close of a taxable year as having been paid during that taxable year be treated as having been timely made pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

FACTS

Trust is organized as a State X trust and is registered under the Investment Company Act of 1940, as amended. Trust consists of 17 separate segregated portfolios of assets, including Funds. Each Fund had elected to be a regulated investment company (RIC) under section 851 of the Code.

Company is responsible for overall management and administration of all Funds. Ever since Date 1, and continuously through the present, Trust has engaged Administrator to provide fund accounting and sub-administration services. The services that Administrator was engaged by Trust to provide during Calendar Year and earlier years included federal tax-compliance services. Among the tax-compliance services that Administrator was engaged by Trust to provide throughout Calendar Year were the preparation and filing of Funds’ federal income tax returns (Forms 1120-RIC) for Taxable Year 1 and the preparation and filing of all extension requests related to those returns. Administrator had been engaged by the Funds to provide similar tax-compliance services in the year preceding Calendar Year and had performed those services in a correct and timely manner for them.

The due date for a Fund to file Form 7004 (Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns) for Taxable Year 1 was Date 4. Trust decided, consistent with the practice for prior taxable years, that each Fund would file a Form 7004 for Taxable Year 1 and so informed Administrator before Date 2.

All the Forms 7004 required for Taxable Year 1 for the Funds were prepared under the direction of a tax supervisor in Administrator’s tax department by a tax analyst on Date 2. On that same date, Administrator’s Vice President -- Tax Services personally reviewed all of such Forms 7004, prepared the U.S. Postal Service certified mail green card and corresponding envelope sticker, and prepared and signed a transmittal letter dated Date 3. The transmittal letter, green card, and envelope sticker were addressed to the appropriate Internal Revenue Service Center. After making electronic copies of all the documents, Administrator’s Vice President -- Tax Services left the completed Forms 7004, the signed transmittal letter, and the completed certified mail documents with a second tax analyst. She had the express responsibility for timely

mailing all the Forms 7004 pursuant to the pre-existing written procedures of Administrator's tax department. Administrator's Vice President -- Tax Services verified that no estimated tax was required to be paid to qualify for extension under the Forms 7004.

On the morning of Date 3, Administrator's Vice President -- Tax Services discussed these extensions with the second tax analyst to verify that she would mail them that day. He then forwarded scanned copies of the documents by email to Trust's Vice President and Chief Financial Officer and to a tax manager at Auditors. In that email, Administrator's Vice President -- Tax Services stated his understanding that the Forms 7004 had been properly filed, i.e., timely mailed to the Internal Revenue Service Center.

On Date 5, a third tax analyst in Administrator's tax department picked up from the second tax analyst the Forms 7004 that had been set aside for filing in Administrator's client files. The third analyst noticed that she had what appeared to be the originals of the transmittal letter, Forms 7004, and certified mail documents. She immediately brought this to Administrator's Vice President -- Tax Services' attention. After investigation, they determined that the Forms 7004 had not been mailed to the Internal Revenue Service Center as required and expected by Trust on Date 3.

Each Fund represents that in accordance with § 855 of the Code, it has satisfied the requirement of § 855(a)(1) that it declared the dividends with respect to which it seeks to make the § 855 election involved in this request by the time prescribed by law for the filing of its Form 1120-RIC for Taxable Year 1. Each Fund's Form 1120-RIC for Taxable Year 1 was filed on Date 6 and included the election under § 855 to treat certain dividends paid in Taxable Year 2 as having been paid during Taxable Year 1. The elections, however, were not timely because their Forms 1120-RIC were filed after the due date therefor and no extensions of time to file such returns had been timely filed or granted.

Each Fund makes the following additional representations:

1. The request for relief was filed by Fund before the failure to make the regulatory election was discovered by the Internal Revenue Service.
2. Granting the requested relief will not result in Fund's having a lower tax liability in the aggregate for all taxable years affected by the election than Fund would have had if the election had been timely made (taking into account the time value of money).
3. Fund did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.

LAW AND ANALYSIS

Section 855(a) of the Code provides that, if a RIC:

- (1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and
- (2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b), (c) and (d).

Section 1.855-1(b)(1) of the Income Tax Regulations sets forth the method of making the election and provides that the election must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

HOLDING

Based upon the facts presented and representations made by Funds, we hold that the Funds have demonstrated good cause for the granting of relief under § 301.9100-3. Accordingly, each Fund's election under § 855(a) on its federal income tax return filed on Date 6 for Taxable Year 1 will be treated as having been timely made.

No opinion is expressed as to whether each Fund's tax liability is not lower in the aggregate for the year to which the election applies than that Fund's tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director will determine the Fund's tax liabilities for the year involved. If the director determines that a Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of each Fund's election under § 855(a) of the Code. This ruling does not relieve a Fund from any penalty that it may owe as a result of its failure to file its federal income tax return on time. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding Fund. In particular, no opinion is expressed or implied whether any Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the Powers of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Alice M. Bennett
Chief, Branch 3
Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: